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**COUNTY ATTORNEY'S OFFICE
MEMORANDUM**

TO: Board of County Commissioners

THROUGH: Stephen P. Lee, Deputy County Attorney

FROM: Henry M. Brown, Assistant County Attorney Ext. 5736 *HMB*

CONCUR: Pam Hastings, Administrative Manager/Public Works Department
Dave Nichols, Principal Engineer/Engineering Division *PN*

DATE: April 20, 2005 *DUP*

SUBJECT: Settlement Authorization
Airport Boulevard, Phase III
Parcel No.: 113
Owner: Johnny Walker and Ruthann Padgett
Seminole County vs. Lewis E. White, et al.
Case No.: 2002-CA-2679-13-W

This Memorandum requests authorization by the Board of County Commissioners (BCC) as to Parcel No. 113 on the Airport Boulevard Phase III project. The recommended settlement is at the total sum of \$248,119.92 inclusive of all land value, severance damages, statutory interest, statutory attorney's fee and costs reimbursements. The total sum is allocated: Land Value \$195,000.00, statutory attorney's fee \$27,390.00; and cost reimbursements \$25,729.92.

I PROPERTY

A. Location Data

Parcel No. 113, is located with frontage on Airport Boulevard and Bungalow Avenue. A location map is attached as Exhibit A.

B. Street Address

None. The property is vacant. A parcel sketch is attached as Exhibit B. The hatched area depicts the part taken.

II AUTHORITY TO ACQUIRE

The BCC adopted Resolution No. 2001-R-108 on June 26, 2001, authorizing the acquisition of Parcel No. 113. The Airport Boulevard Phase III road improvement project was found to be necessary and serving a public purpose and in the best interests of the citizens of Seminole County. The Order of Take occurred on March 4, 2003, with title vesting in Seminole County on March 12, 2003, the date of the good faith deposit.

III ACQUISITIONS AND REMAINDER

The fee acquisition from Parcel No. 113 totaled 6,495 s.f. from a parent tract of 44,131 s.f. leaving a remainder of 37,636 s.f. In the before, the property was rectangular in shape with frontage on both Bungalow Avenue and Airport Boulevard. In the after the remainder is small and irregular in shape. The south end of the remainder will be approximately three feet below grade. The property in the after will not front on the new alignment of Airport Boulevard.

IV APPRAISED VALUES

A. County Reports

Parcel No. 113

Diversified Property Specialists, Inc. performed an appraisal showing the value as of September 20, 2001, at \$124,000.00. An update opining value as of February 1, 2003, reported full compensation to be \$131,200.00.

B. Owners' Reports

Parcel No. 113

Calhoun, Dreggors and Associates performed the owners report as of March 12, 2003 to opine full compensation totaling \$321,900.00.

V BINDING OFFER/NEGOTIATION

The BCC approved written offer was \$112,000.00 based on a preliminary appraisal value. At mediation, the owner's position was \$348,845.91 inclusive of statutory interest and exclusive of attorney fees and costs.

The County's position was the updated appraised value of \$131,200.00. This sum was exclusive of interest, attorney's fees and cost reimbursements.

The proposed mediated settlement is at the total sum of \$248,119.92. Land, severance damage, and statutory interest were mediated at \$195,000.00 contingent

upon a negotiated settlement of costs within thirty (30) days. Statutory attorney's fees total \$27,390.00. The negotiated costs total \$25,729.92.

VI ATTORNEY'S FEES AND COSTS

A. Attorney fee - The statutory attorney's fee reimbursement totals \$27,390.00. The sum is statutorily computed based on a settlement sum of \$195,000.00 less a written offer of \$112,000.00 to produce a benefit of \$83,000.00 at 33%. The statutory fee is \$4,000.00 higher than it might have been because the written offer of \$112,000.00 was based on the preliminary appraisal rather than the one that was approved. Binding written offers are no longer made until receipt of the approved final appraisal.

B. Cost reimbursements - The owners claimed costs totaling \$28,621.85 allocated:

(1)	Appraisal	\$15,343.00
(2)	Planners	\$10,617.78
(3)	Engineering	\$ 2,185.00
(4)	Court Reporters	\$ 113.99
(5)	Exhibit preparation	\$ 81.21
(6)	Office overhead	<u>\$ 280.87</u>

Total claimed costs \$28,621.85

In negotiation, several non-reimbursable office overhead costs were taken out and expert claims reduced. Negotiations resulted in a reduction of 10.1% from \$28,621.85 to \$25,729.92. The negotiated cost settlement is allocated as follows:

(1)	Appraisal	\$13,800.00
(2)	Planners	\$ 9,609.72
(3)	Engineering	\$ 2,125.00
(4)	Court Reporters	\$ 113.99
(5)	Exhibit preparation	\$ 81.21
(6)	Office overhead	<u>\$ 0.00</u>

Total reimbursed costs \$25,729.92

VII COST AVOIDANCE

By this settlement, the County avoids all additional costs associated with litigation.

VIII RATIONALE

Parcel No. 113 presented both a high impact taking and changed highest and best use issues. As shown by the hatched area on Exhibit B, 14.7% of the lot was acquired. The property changed from a rectangular shape to an irregular shape becoming very narrow at the south boundary. In addition, a grade change of approximately 3 feet occurred at the south boundary.

The before property was zoned residential; however, it was adjacent to the City of Sanford boundary and property zoned commercial. A reasonable probability of rezoning issue was presented. The owner's report opined a changed use from commercial to residential in the after.

The high impact taking and rezoning issue would have influenced a jury.

The County's trial position was \$131,200.00 and the owners' position was \$321,900.00. The owners' report found huge severance damages resulting from the irregular shape of the remainder, the changed grade, and an alleged changed highest and best use. The spread between valuation numbers is \$190,700.00.

A jury tends to split between valuation numbers except when either side presents a compelling case not to split. Here, the high impact taking would have influenced a jury to render a verdict above the split in values, which was \$226,550.00. The changed highest and best use issue would have been confusing. The settlement sum at \$195,000.00 is less than the split representing 33.4% of the spread.

The County's exposure at trial was \$321,900.00 plus statutory interest, trial costs, and a higher statutory attorney's fee calculated at 1/3 of the verdict or settlement amount above the written offer amount. The proposed settlement for the land value is less than the split; however, it caps statutory attorney fees and stops the continuing costs.

The total settlement at \$248,119.92 makes sense in light of the exposure at trial and potential for increased attorney's fees.

IX RECOMMENDATION

County staff recommends that the BCC approve this settlement in the total amount of \$248,119.92 inclusive of land value, severance damage, improvements, statutory attorney's fee and costs.

HMB/dre

Attachments

Exhibit A - Location Map

Exhibit B - Parcel Sketch

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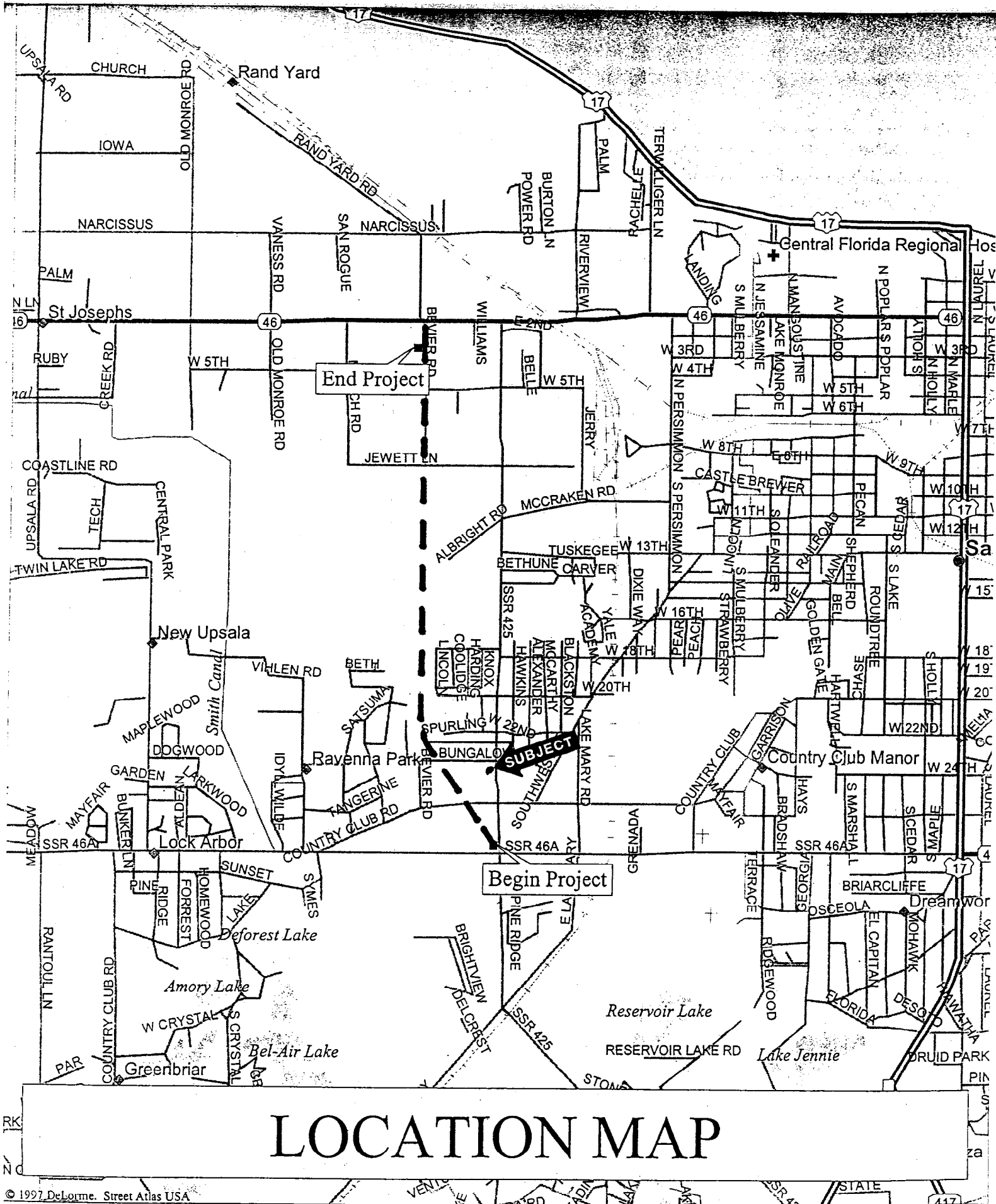
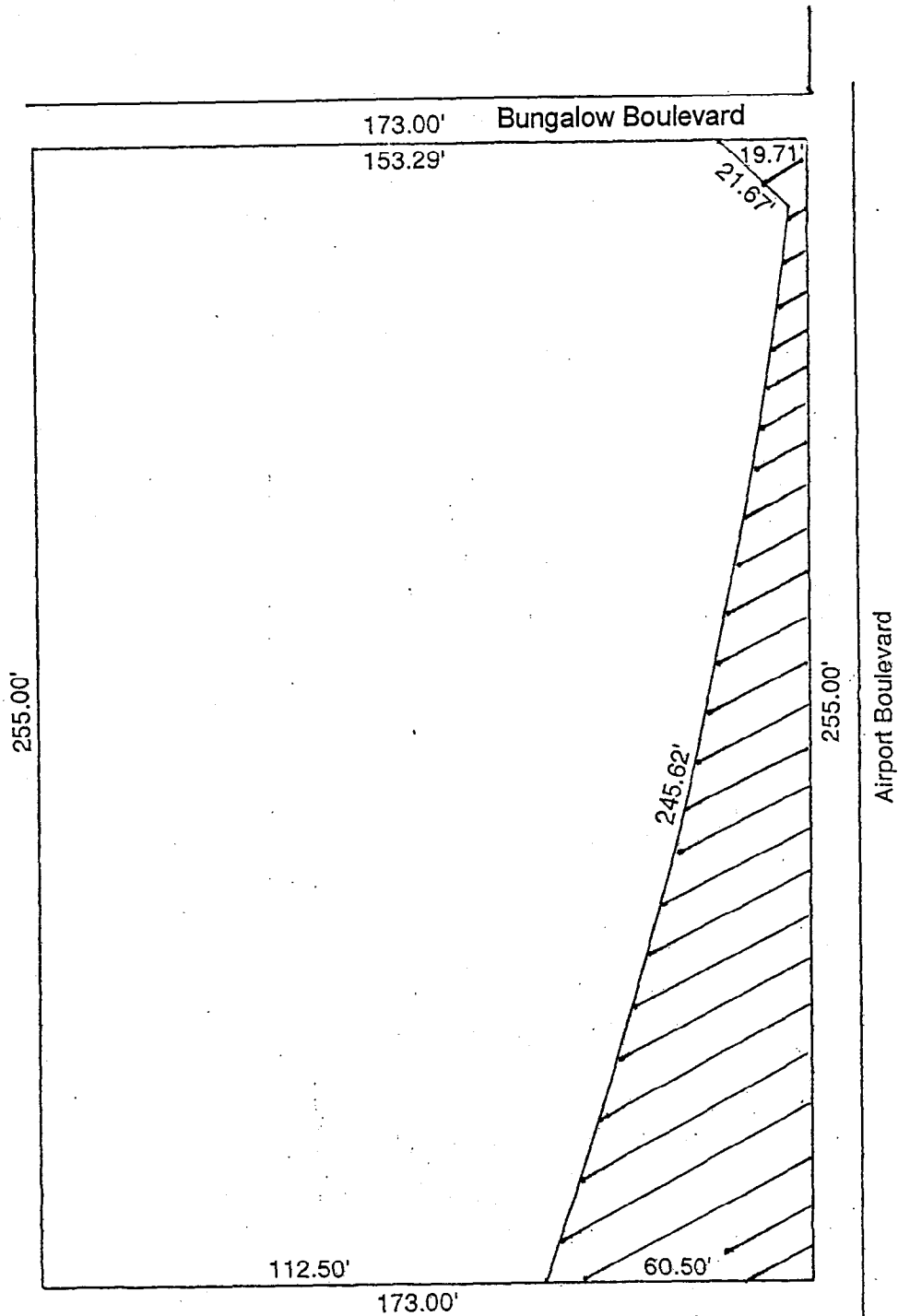


EXHIBIT B




Sketch Not To Scale

Parent Tract:	44,131 sf	1.013 ac
Part Taken:	<u>6,495 sf</u>	<u>0.149 ac</u>
Remainder:	37,636 sf	0.864 ac

SKETCH WITH TAKING